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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Richard C. Johnson

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EXAMINER

BADII, BEHRANG

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/965,098	Applicant(s) JOHNSON, RICHARD C.	
	Examiner BEHRANG BADII	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

The 101 rejection is withdrawn.

As per the 103 rejection, applicant's arguments filed 11/29/08 have been fully considered but they are not persuasive. Applicant's arguments are mainly that the claim limitation teaches a novel and special way of auctioning. However, the claim limitations claim that a current asking price for an item is set. The asking price is decreased until a first bid is received. Awarding the item to the first bidder, unless another bidder bids higher. This is unequivocally disclosed by Das as discussed below. The applicant's arguments are repetitive and confusing. For example, the applicant states towards the bottom of page 9 of the arguments: "There is no claimed "new" bid, except as there is a first bid and thereafter subsequent current highest bids". Is not the subsequent highest bid a new bid? Further, applicant states: "Thus, according to the claimed embodiment, there is no separate round of bidding in which "new" bids might be found. As claimed, there is only a first bid and then additional bids". So, there is a bid and then there are more bids after the first bid. If there is a first bid and then there is a second bid, is not the second bid a new bid? The second bid is equivalent to a new bid. The arguments are replete with confusing statements. Another example is that the applicant states "Prior art rules for auctions typically set time intervals within which otherwise qualified bids are to be made, whereas the claimed embodiment allows for an auction to be closed with a single (first and winning) bidder the winner if the reserve price set." This statement is false in view of the claim limitation as explained above.

Art Unit: 3694

Specifically, the first bidder is awarded the item only if another bidder does not out bid the first bidder. This is far different than what the applicant is arguing, "whereas the claimed embodiment allows for an auction to be closed with a single (first and winning) bidder the winner if the reserve price is met." The reserve or asking price can be met, but according to the applicant's limitations, that does mean this particular bidder is awarded the item, because if a second bidder outbids him/her, the second bidder is awarded the item. Although the applicant argues that claim limitation is not a combination of a Dutch and an English auction on the bottom of page 10, the applicant contradicts this argument on page 14 of the arguments by stating "Properly understood, the claimed embodiment represent a simple and elegant solution to a vexing problem of finding the initial price at which to start an English auction, ***combining selected advantages of the Dutch system with the ability of the English system to best realize the market value of the items for sale***". These arguments are contradictory and confusing. The applicant calls the claimed limitation a "continuous auction" on page 11 line 3 of the arguments. Das states the mechanics and uses the term continuous auction as discussed below.

Claims 1-7 and 11-24 have been examined.

Claim Rejections - 35 USC § 103


The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 11-24 rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's background and further in view of Boarman et al, USP 6,609,112 and Das et al, USPAP 2002/0147675.

As per claims 1, 11 and 18, the applicant's background discloses a method/computer system/machine readable medium of conducting an auction for an item, comprising the steps of: setting a current asking price for the item; posting the current asking price and enabling bidding at the current asking price; periodically decreasing and posting the current asking price until a first bid is received from a first bidder at the then current asking price, and awarding the item to the first bidder at the then current asking price. The applicant's background does not disclose, after the first bid is received, at least one additional bidder bids higher than the first bid within a predetermined time interval after the first bid is received. Boarman and Das disclose after the first bid is received, at least one additional bidder bids higher than the first bid within a predetermined time interval after the first bid is received (Das et al.: p 53-54, 65 & 77) (Boarman: col.4, 29-67; col.5, 1-61; fig 3a; abstract). More specifically, p54 of Das states: "an important class of continuous double auctions in which the auctioneer maintains bids and ask queues such that, when the current best bid is exceeded or the current best ask is undercut, they are not removed, but simply demoted to the second position in their respective queue, with the new bid or ask assuming the first position. Bids or asks that have been pushed down to lower positions in their queues by a succession of higher bids or lower asks may later rise back to the top of their queues

Art Unit: 3694

when the  or asks above them are removed through trade, withdrawal, expiration, or possibly other circumstances.”

It would have been obvious to modify the applicant's background to include after the first bid is received, at least one additional bidder bids higher than the first bid within a predetermined time interval after the first bid is received as that taught by Boarman in order to conduct proxy bidding within the context of Dutch auctions (col.1, 60-63).

As per claims 2, 12 and 19, the applicant's background further discloses setting a reserve price for the item, the reserve price being that price below which the item will not be sold, and stopping the auction if the periodic decreasing step decreases the current asking price to a level that is at or below the reserve price and no bid is received at the reserve price.

As per claims 3, 13 and 20, the applicant's background further discloses wherein the decreasing step is carried out at a predetermined regular time interval.

As per claims 4, 14 and 21, the applicant's background further discloses wherein the posting step includes a step of causing the current asking price to be displayed on at least one remote computing device coupled to a network.

As per claims 5, 15 and 22, the applicant's background further discloses wherein when the at least one additional bidder bids higher than the first bid, the method further comprises the steps of: accepting increasingly higher successive bids from at least one of the first bidder and the at least one additional bidder, and awarding the item to a highest bidder among the first bidder and the at least one additional bidder.

As per claims 6, 16 and 23, the applicant's background further discloses wherein the accepting step accepts each one of the increasingly higher successive bids if timely received.

As per claims 7, 17 and 24, the applicant's background further discloses wherein the item includes at least one of a contract, goods, a service, real estate and a legal right.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Behrang Badii whose telephone number is 571-272-6879. The examiner can normally be reached on Monday-Friday.

Art Unit: 3694

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to (571)273-8300

Hand delivered responses should be brought to

United States Patent and Trademark Office
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

Art Unit: 3694

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3600 Customer Service Office whose telephone number is **(571) 272-3600**.

/BB/

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694